INTOXICATING LIQUORS: STATUTORY INTERPRETATION.—The feeling in favor of prohibition and against the demon rum has become so strong in Kansas that it has even affected the minds of the judiciary; so that their interpretation of statutes savors of legislation. In the case of *State v. Miller*[1] a druggist was found guilty of violating the intoxicating liquor statute, by selling Jamaica ginger. The statute of 1881 defining intoxicating liquors reads,[2] "All liquors mentioned in section one of this act, and all other liquors or mixtures thereof, by whatever name called, that will produce intoxication, shall be considered and held to be intoxicating liquors within the meaning of this act." There was a proviso,[3] reading, that such liquors may be sold for medical, scientific and mechanical purposes as provided in the act. The only change made by the 1909 amendment, under which this case was decided, was to omit the proviso.

The able opinion of Judge Brewer[4] interpreting the statute of 1881 was overthrown by the opinion in this case. To his mind the use of intoxicating liquors as a beverage was the evil, and the statute must be read in that light. It intended to put a stop to such use, and limit alcoholic preparations to the necessities of medicine. So he divided the cases into three classes. The first embraced what are generally and popularly known as intoxicating liquors unmixed with other substances, as brandy for instance. The second included standard, well known articles which while containing alcohol are never classed as intoxicating beverages and their uses are confined to culinary, medical or toilet purposes. The third class embraces compound preparations in which alcohol is present; these may be purely medicinal in their purpose and effect, or mere substitutes for the usual intoxicating beverages as some patent medicines, cordials and tonics. The first class (in Judge Brewer's view) falls within the statute, the second, without, and the third is a question of fact for the jury. The effect of the present decision is to place the second and third classes in one, making it a question of fact for the jury or the court when sitting as a trier of the facts.

According to this opinion such preparations as tincture of gentian, paregoric, bay rum, cologne and essence of lemon are intoxicating liquors. Even though a witness drink part of a bottle of essence of cinnamon as one did in State v. Muncey,[5] and, "became so affected that he could not see after night"; why should thousands of housewives be deprived of this valuable seasoning? Under this decision ladies must forego cologne, as

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[1] (July 7, 1914), 142 Pac. 979.
[2] 1901 Gen. Stat. Kansas, § 2460.
[3] Kan. Laws 1909, c. 164, § 4.
[4] Intoxicating Liquor Cases (1881), 25 Kan. 751, 37 Am. Rep. 284.
[5] (1886), 28 W. Va. 494.

they cannot get a physician's prescription for it or file an affidavit that they require the same for scientific or mechanical purposes. So instead of leaving to the legislature for determination whether it should be a misdemeanor to sell any tinctures and compounds containing a certain percentage of alcohol, the courts themselves have legislated. They have so legislated notwithstanding the fact that the legislature could, by appropriate words, have evidenced its disapproval of Judge Brewer's classification of 1881.

There should be no need to prove what bread is and for what purpose it is used. There should be no more need in respect to what whiskey or gin is[6] on the one hand or cologne or bay rum on the other. The court should take judicial notice of their uses and the character of these articles as in United States v. Ash,[7] where the court says, "that it would neither stultify itself nor impeach its own veracity by telling the jury that it had no judicial knowledge that the drink commonly known as the whiskey cocktail is an intoxicating drink, but that on the contrary it would assume judicial knowledge that it is intoxicating." Common sense should be used in the interpreting of a statute and it should be remembered that the statute in question was not the result of a crusade against the extract of cologne or the essence of lemon. Plowden[8] says: "It is not the words of the law but the internal sense of it that makes the law. And the law may be resembled to a nut which has a shell, and a kernel within. The letter of the law represents the shell and the sense of it the kernel, and you will be no better for the nut if you make use only of the shell." Apparently the Kansas court overlooked the kernel.[9]

L. G.

MASTER AND SERVANT: UNLAWFUL EMPLOYMENT OF CHILD IN RELATION TO WORKMEN'S COMPENSATION ACT.—In *Hillestad v. Industrial Insurance Commission of Washington*[1] the parents of a child sued the commission under the Workmen's Compensation Act for the amount due for the death of the child. The child was below the age requirement of the Child Labor Laws and was working for his father; for these reasons the court refused to allow the claim, holding that the father could not recover upon his own negligence or wrong. This is in accordance with the view that the employment of a child under statutory age is an act of negligence.[2] It would, perhaps, be more accurate to say that it is

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[6] Black on Intoxicating Liquor, ch. 1, § 8.

[7] (1896), 75 Fed. 651.

[8] Note to Eyston v. Studd (1574), 2 Plow. 465.

[9] A decision of this kind would probably not affect dry districts in California, as the Local Option Act of 1911 carefully draws the distinction between alcoholic liquors used as beverages and those used for other purposes. 1911 Stat. Cal. 599.

[1] (Wash., July 14, 1914), 141 Pac. 913.

[2] Rolin v. Reynolds Tobacco Co. (1906), 141 N. C. 300, 53 S. E.